



21st Floor
1251 Avenue of the Americas
New York, NY 10020-1104

Jeremy Chase
(212) 489-8230 tel
(212) 489-8340 fax

jeremychase@dwt.com

May 25, 2023

VIA ECF

Honorable Lorna G. Schofield
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Bruce Hay v. The Gernert Company, Inc., et al., No. 1:22-cv-00698-LGS

Dear Judge Schofield:

This law firm represents defendants The Gernert Company (“TGC”) and Sarah Burnes (“Burnes,” and with TGC, “Defendants”) in the above referenced action, and we write to raise a peculiar but pressing issue with the Court.

Pursuant to Your Honor’s March 13, 2023 Order granting Jillian Weiss’s motion to withdraw as attorney for Plaintiff Bruce Hay, the Court ordered Plaintiff to file a letter by May 12, 2023, stating whether he has retained new counsel or whether he intends to proceed in this action *pro se*. See Doc. No. 58. On May 11, 2023, Plaintiff filed a letter informing the Court that he intends to proceed *pro se*. Doc. No. 62. Plaintiff affixed the following letterhead to his filing:

Bruce L. Hay
1309 Beacon St, Ste. 300
Brookline, MA 02446
(617) 290-5083
brucelawhay@proton.me

On May 23, 2023, I attempted to telephone Mr. Hay at the number listed above, and was surprised when an attorney named Ariana Kushak answered my phone call. During my conversation with Ms. Kushak, she informed me that the address and telephone number listed on Mr. Hay’s letterhead correspond to her legal office. See <https://www.kushaklaw.com/>. She also informed me that Mr. Hay is a former client who never was affiliated with her office other than as a client, and that she was unaware that he was representing that her address and telephone number belonged to him, much less that he was doing so in legal filings with the Court. Indeed, the PACER docket for this case currently lists Ms. Kushak’s address and telephone and number as belonging to Mr. Hay.

Later that evening I sent an e-mail to Mr. Hay at the above-listed email address to raise this issue with him and asked that he file a letter with the Court by close of business yesterday both

Hon. Lorna G. Schofield

May 25, 2023

Page 2

explaining why he represented to the Court that his former lawyer's contact information was his own, and updating the Court with his current and accurate contact information. Mr. Hay neither responded to my e-mail nor filed a letter with the Court as requested.

Mr. Hay's actions present multiple problems. First and foremost, Federal Rule of Civil Procedure 11(a) provides, in relevant part, that "[e]very pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name--or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. . . The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention." Mr. Hay's May 11 filing clearly violates Rule 11(a) as it does not state his actual address or telephone number, and he has not corrected the omission – or, in this case, outright misstatement – upon having the matter brought to his attention. His failure to provide the Court and counsel of record with his accurate contact information presents real practical difficulties in the parties' ability to communicate and meet our obligations to the Court. While Mr. Hay is representing himself *pro se*, he is no ordinary *pro se* litigant. Until recently, Mr. Hay was Professor of Law at Harvard Law School, and even served as a law clerk to late Associate Justice of the Supreme Court Antonin Scalia. He is well-acquainted with the Federal Rules of Civil Procedure, and he must follow the them like everyone else.

Accordingly, Defendants respectfully request that the Court (1) Order Mr. Hay to explain on the record why he provided false contact information to the Court, (2) Order Mr. Hay to provide updated and accurate contact information and certify under penalty of perjury that the contact information is accurate, (3) strike any and all of Mr. Hay's pleadings or filings that fail to comply with the aforementioned proposed Order, and (4) grant any other relief that the Court deems just and proper.

We thank you for your consideration of this matter.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By: /s/ Jeremy A. Chase

Jeremy A. Chase

Katherine M. Bolger

1251 Avenue of the Americas, 21st Floor

New York, NY 10020-1104

(212) 489-8230 Phone

jeremychase@dwt.com

katebolger@dwt.com

*Attorneys for Defendants The Gernert
Company, Inc. and Sarah Burnes*